

TEXAS GROUNDWATER PROTECTION COMMITTEE
RECORD OF MEETING
First Quarter Meeting, Fiscal Year 2002

Meeting Date: November 28, 2001
Meeting No.: 49

Place: TNRCC Campus, Building F
Room: 2210

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MEETING ATTENDANCE

<u>TGPC Members</u>	<u>Affiliation</u>
Mary Ambrose	TNRCC
Richard Ginn	RCT
Stefan Schuster	TWDB
Donnie Dippel	TDA
Alan Dutton	BEG
Donna Long	TSSWCB
Bruce Lesikar	TAES
Lee Parham	TDLR
Ken Ofunrein	TDH

TDH and TAGD representatives not present at roll call.
TDH representative arrived shortly after roll call.

<u>Agency Staff</u>	<u>Affiliation</u>	<u>Program</u>
Cary Betz	TNRCC	Technical Analysis Division
Frank Fuller	TNRCC	Policy and Regulatory Division
Steve Musick	TNRCC	Technical Analysis Division
Minor Hibbs	TNRCC	Strategic Environmental Assessment
David Parmer	TNRCC	Strategic Environmental Assessment
Snehal Patel	TNRCC	Environmental Law Division
Jason Haas	TNRCC	Environmental Law Division
Warren Samuelson	TNRCC	On-Site Wastewater Program
Abiy Berehe	TNRCC	Technical Analysis Division
Elston Johnson	TNRCC	Field Operations Division
Julie Talkington	TNRCC	Field Operations Division
Kathy Ramirez	TNRCC	Policy and Regulatory Division
Isaac Jackson	TNRCC	Intergovernmental Relations Division
Jim Muse	TNRCC	Policy and Regulatory Division
Chet Clarke	TNRCC	OPRR - Technical Support
Chris Chandler	TNRCC	OPRR - Technical Support
Ambrose Charles	TDA	Risk Assessment & Toxicology
Jeanette Ohare	TDA	Risk Assessment & Toxicology
Debbie Danford	TDA	Asst. Commissioner's Office

<u>Interested Parties</u>	<u>Affiliation</u>
Jim O'Connor	San Antonio Water System

(20 in audience)

MEETING HANDOUTS

1. Agenda
2. Agricultural Chemicals Subcommittee Report
3. Discussion Draft - State Groundwater Protection Strategy
4. Brochure - "So...now you own a septic system"
5. Brochure - "Care and feeding of your septic system"
6. Brochure - "Groundwater Protection and your septic system"
7. Texas Agriculture Extension Service L-5347 "On-Site wastewater treatment systems -
Selecting and permitting"
8. Texas Agriculture Extension Service B-6077 "On-Site wastewater treatment systems -
Operation and maintenance"
9. TNRCC "State of the Texas Environment - Strategic Plan FY 2001-2005/ Volume 2"
10. Texas Groundwater Protection Committee - Rule Review Plan
11. Texas Water Code, Subchapter J Groundwater Protection, §26.401-§26.407
12. Texas Administrative Code Title 31, Natural Resources and Conservation,
Part 18, Texas Groundwater Protection Committee
13. TNRCC Rules in Process - Rules Tracking Log
14. Texas Groundwater Protection Committee Record of Meeting FY2001, 4th Quarter
15. Slides - The Texas Open Meetings Act
16. Draft State Water Plan - Water for Texas 2002

MEETING RECORD OF NOVEMBER 28, 2001

I. Call to Order and Introductions

Mary Ambrose, Designated Chairman of the Texas Groundwater Protection Committee (TGPC), called the FY2002, First Quarterly Meeting to order at approximately 1:11 p.m., CST.

II. Subcommittee Reports -

Agricultural Chemicals - Steve Musick, TNRCC, Chair. The Agricultural Chemicals Subcommittee held its FY 2002 First Quarterly Meeting at 10:00 a.m. on November 28, 2001, at the TNRCC campus.

The members were updated on Task Force activities:

Site Selection - TWDB reported that their FY 2002 groundwater sampling/monitoring plans include the Carrizo-Wilcox aquifer and the minor aquifers: the Queen City, the Sparta and the Yegua-Jackson (only recently delineated by the TWDB). TWDB will coordinate pesticide sampling with the TNRCC and groundwater conservation districts in these areas for atrazine and metolachlor analysis. TNRCC atrazine analyses were reported for previous TWDB sampling in the Hickory, Ellenburger, Lipan, Woodbine and Seymour aquifers.

Education - TCE reported on recent educational and related activities focusing on pesticides and water quality in the Panhandle and other areas with agricultural producer interest.

Best Management Practices - The BMPTF reported on its work identifying sources of BMPs focusing on atrazine and the Panhandle Region to support development of further educational activities on pesticides in that area of the state.

No information has been received from EPA regarding the status of the draft PMP rule. TDA noted that SFIREG was holding their next meeting next week in Washington D.C. TDA anticipates some discussion with EPA Headquarter staff related to the draft rule and will report back to the ACS. The Subcommittee heard a presentation from DowAgro Sciences on their Groundwater (Monitoring) Surveillance Plan required by EPA for registration update for the pesticide Picloram. Texas is a major use state and one of six states included in the Surveillance Plan. Picloram is one of the top ten pesticides for groundwater leaching potential in Texas and one of EPA's top twenty frequently found pesticides in groundwater. Sixteen sites were sampled in Texas with only one detect near the detection limit and well below (two orders of magnitude) the health-based level.

The Subcommittee heard presentations on preliminary results of recent monitoring efforts and atrazine analyses for the Gulf Coast and Hill Country regions' aquifers, and a summary of pesticide analyses in Texas through calendar year 2000. The Subcommittee discussed and approved the FY 2002 groundwater pesticide sampling strategy developed by the SSTF.

Data Management - Cary Betz, TNRCC, representative. The Data Management Subcommittee has not formally met since the last Committee meeting. The group has still not been completely formed up.

The Subcommittee has some tasks assigned to it under the groundwater protection strategy, and staff has prepared an outline for the Data Management section of the strategy. Information gathered by a TNRCC intern this past summer indicates that there is a good deal of difference of opinion among members as to what constitutes groundwater data. Data may be the results of a groundwater availability model to some members, whereas other perceive raw results from quantity and quality monitoring efforts as data. As the outline is finished, Mr. Betz will be traveling around to conduct personal interviews with data managers for input and ideas on data management. Mr. Betz also requested that members go back to their agencies and seek out any groups that might be formulating agency policies with respect to data management, so that their input can also be sought out. Coordination is going to be a key theme with this section of the strategy.

The cycle is starting again for the Joint Groundwater Monitoring and Contamination Report - 2001. We will be sending out a solicitation for information to member agencies in December. Staff is also beginning the compilation of data for the national Water Quality Inventory. TNRCC staff will be coordinating with TWDB staff for data downloads for this report.

Abandoned Water Well Closure Task Force - Bruce Lesikar (TAES) reported the Plugging Abandoned Water Wells Water well closure demonstration was conducted on November 27, 2001, in Haskell County, in cooperation with the local groundwater conservation district. Groundwater conservation district staff will also be taking Global Positioning System (GPS) locations for wells within the county. This has caused a little interest from property owners as to how to close wells. Weather hampered attendance, so a second event is being planned. Of importance is the solicitation of funding for plugging materials such as bentonite chips. Next event is on December 6, 2001 in Gillespie County, followed by an event in Victoria County scheduled for April 19, 2002. An event in Hamilton County is planned for early spring date. The repeat event for Haskell County will likely take place in May or June. A draft of a poster is being prepared for use in the training sessions.

Dr. Alan Dutton offered a "success story" regarding an abandoned well discovered during a vacation at a family cabin in the Adirondack Mountains. The local community library provided internet access for Dr. Dutton to download the TGPC publication on

plugging abandoned wells, and he presented the document to the camp's council to convince them that this well should be plugged, and to demonstrate how it should be done. The council agreed and the well was plugged - Dr. Dutton offered that it is great to have the resources available and to even access them from New York state.

Groundwater Protection Strategy Work Group - Frank Fuller (TNRCC) reported that the strategy work group has not met this quarter. Additional discussed in detail under the action item portion of the agenda.

III. Presentation

Open Meetings Act - Snehal Patel, attorney, and Jason Haas, Environmental Law Division TNRCC.

The statute authorizing the Texas Groundwater Protection Committee specifically states that the Committee is subject to the Open Records Act and the Open Meetings Act. This means that there are certain obligations and responsibilities that must be met, and violations may result in civil or criminal penalties.

The Texas Open Meetings Act requires that any deliberations (discussions, conversations) between a quorum of the committee (six members, in this case) of public business, is subject to the act. The statute authorizing the TGPC specifically states that a member, as named in the statute, may designate a representative to attend and act in Committee meetings on the named member's behalf. However, if the designated representative sends a substitute, there are adequate opinions by the Attorney General that say without express language in the statute allowing substitutes, the substitute could not conduct business on the member's behalf without violating the act. In order to allow flexibility, counsel suggests named members draft a letter to the named Chair, authorizing a designated representative to act on the behalf of the named member, and including a designated alternate to act on behalf of the named member in the event that the designated representative cannot attend a meeting.

The act also covers any of the subcommittees where there might be a quorum of members present. However, attending a social event, such as lunch or a reception, does not fall under the jurisdiction of the Open Meetings Act, so long as public business is not discussed. Similarly, if members, designated representatives or alternates attend a conference or a workshop dealing with groundwater issues, this does not fall under the jurisdiction of the Open Meetings Act, so long as no actions are taken on public business.

The Open Meetings Act requires that minutes or a tape recorded record be met. If minutes are taken, the content and/or result of each deliberation or vote must be recorded. Outside parties may come into the meetings to record or film deliberations. Notice must be posted at least seven days prior to the meeting, and must contain specific descriptions of what the subjects of the deliberations are. Closed meetings are allowed in the event of

litigation or property acquisition, however, these activities do not appear to be within the scope of the TGPC's statutory authority.

If there are any potential violations of the Open Meetings Act, any interested party may file a suit to force the Committee to follow the act or to stop the Committee from violating the act. Any action that is taken in violation of the act is voidable, and can be stricken by the courts. Criminal penalties are provided for any member or group of members of the Committee or knowingly attempts to circumvent the act, by meeting in less than a quorum and discussing public business. The example of a number of members constituting a quorum altogether, meeting in a restroom only two at a time to discuss public business was offered to illustrate this provision. The key word is "knowingly", and all members/representatives via this presentation, have been made aware of the statutory requirements. This type of offense provides for a fine up to \$500 and jail time up to 6 months, for individuals convicted of misconduct.

The Office of the Attorney General has a website with a handbook for conducting open public meetings - <http://www.oag.state.tx.us/newspubs/publications.html>

On-site Wastewater - Warren Samuelson, TNRCC, and Bruce Lesikar, TCE.

State statutes authorize the TNRCC's jurisdiction over on-site wastewater facilities, and also provides for delegation of that jurisdiction to local entities. There are approximately 300 entities including cities, counties, river authorities and special districts that have been delegated this responsibility, and provide 97% of the licenses issued in the state. These local entities also have the ability to set more stringent standards, whereas the counties or areas covered only by the state may not have any more stringent rules than the state rules. There has been a marked increase in the number of entities coming in with more stringent water conservation standards in recent months.

The state's rules have also become more stringent over the past several years, and in June of 2001, the latest rules provided additional enforcement options for the state. Installers and manufacturers have indicated that the increased stringency and stricter enforcement provisions have had a very positive effect on the failure rate of their systems - i.e. fewer systems are failing because each system is now designed for the site, as opposed to a "standard" system being installed at all sites. These non-standard systems are obviously more protective of the environment as well.

The On-Site Wastewater Treatment Research Council has funded the development of "fact-sheets" by the Texas Cooperative Extension (TCE). The TGPC chair has examples. These "fact-sheets" cover a variety of topics, including maintenance, which is expected to be an increasingly important item as non-standard systems proliferate throughout the state.

50,000 systems have been permitted in the past two years, including some entire subdivisions that are using on-site systems. The subdivisions may previously have used centralized collection and treatment systems. The types of systems being installed today do not appreciably differ between the areas administered by a local entity with stricter rules, and those areas administered by the state. The state maintains a database that contains reasonably good information on the types of systems being installed, along with other information obtained from the delegated entities. This information dates back to 1994.

The TCE has produced the aforementioned “fact-sheets”, and they are available as hard-copies, or can be downloaded from the internet. The “fact-sheet” slated for production next year covers “mound-systems”, and includes information as to when and why this type of system is preferable, and how to optimize construction and ground and surface water protection. Five of the “fact-sheets” are printed in Spanish, with the goal of the entire set to ultimately be printed in Spanish. The “Small Flows Clearinghouse” provides the TCE “fact-sheets” on request, along with other brochures from throughout the nation. Some examples of brochures are provided to Committee members in their packets.

Short-courses are being implemented for manufacturers and installers. These short-courses are required as continuing education to maintain their certifications. The site-evaluator certification will return next year. TCE will continue to follow trends in the on-site field to develop educational materials that are current and pertinent.

IV. Business - Discussion & Possible Action

Texas Groundwater Protection Strategy - Frank Fuller, TNRCC. Members have a revised time line for the completion of Chapters 1- 8. The revised time line will allow compilation of materials for the January 15 retreat. The retreat will be an open meeting, will be professionally facilitated, and will not be a line-by-line editing of the draft document.

Next meeting date: Retreat, Tuesday, January 15, 2002, 8:00 a.m.. Next regular meeting Thursday, February 21, 2002, 1:00 p.m. The February meeting will include a staff proposal for the review of the Committee’s rules. Members are requested to submit comments related to the rules to support staff if they wish them to be considered as the rule review and revisions are drafted.

V. Information Exchange for Groundwater Related Activities/Status Update

Draft Water Plan - Stefan Schuster, TWDB. Over 2500 written comments have been received on the draft plan alone. TWDB staff has processed nearly all of them at this time. The Board will make a recommendation on the publication of the plan at their December 19, 2001 meeting. The plan will then go out for publication. Of the comments

received, very few require significant revisions to the plan, but some significant revisions are already being undertaken, and it should be ready for publication after January 5, 2002.

TNRCC Strategic Environmental Assessment (SEA) Group - Minor Hibbs, TNRCC. One of this groups responsibilities is development of the biennial "State of the Texas Environment - Strategic Plan". A copy is provided in the member's meeting packets.

This year, four specific issues have been selected that we are putting more research into: Air Toxics, Groundwater Quality, Air-upsets, and Non-point source issues associated with surface water quality. With respect to groundwater quality, staff is reviewing TWDB's ambient groundwater data, and looking at certain pressures that there might be on groundwater resources of the state. This includes looking more closely at the distribution across the state of groundwater contamination site data found in the Joint Groundwater Monitoring and Contamination Report. Staff is also looking at the distribution of on-site systems that were discussed earlier. The distribution of nitrates and pesticides are of particular interest. A draft of this report will be provided around mid-January, and the Committee's review and comment is requested.

The question was posed as to whether there was a parallel between the groundwater protection strategy currently being developed by the Committee and the SEA group's strategic plan. The groundwater protection strategy is a document that covers multi-agency responses and program to groundwater quality and quantity degradation, whereas the SEA group's strategic plan is strictly a TNRCC document, and is much more narrow in scope.

VI. Announcements

TNRCC rule tracking log - Kathy Ramirez. Nine rules that may be of interest to Committee members are highlighted;

- designation of a groundwater management area 2001-012294. Specific rulemaking for an area east of the Trinity River covering all of the Carrizo-Wilcox, Queen City-Sparta and Yegua-Jackson aquifers. (27 counties)
- 2001-039334ws - regulation of the remediation of above ground and underground storage tanks, implementing provisions of HB 2687 and HB 2912
- 2001-049305wt - underground injection application fees.
- 2001-086213wt - implementing HB 2912, Article 10 for adding a 30 day comment period for protection plans in the Edwards Aquifer
- 2001-101285wt - On-site sewage facility charge-back fee.
- 2001-041321wt - CAFO sole-source drinking water rules.

Others not on the rule log yet include multiple On-site systems on one large tract of land; an Underground Injection Control ban in the Edwards Aquifer, with exceptions; and secondary containment required for USTs located in certain aquifers in Bexar and Comal

counties. Also there is a rule in response to SB 2, altering the way groundwater management areas are designated.

EPA is starting up again on their Groundwater Report to Congress. This requirement is under the Safe Drinking Water act, and was subcontracted to the Groundwater Protection Council. The purpose is for EPA to try to understand specific groundwater issues and needs of the individual states.

EPA confirmed on October 31, 2001, that the standard for arsenic will be 10 ppb. This will have greatest impact on small drinking water systems. \$20 million will be provided by EPA for research on treatment systems that will help meet these standards.

Underground Injection Control Council will meet in January 22-24, 2002 in Houston for Class I and II injection wells.

West Texas Aquifers meeting December 4-7, 2001 Sul Ross University in Alpine.

State Auditors Office (SAO) Report on Groundwater Conservation Districts - Steve Musick, TNRCC. SAO has audited 13 districts and found problems with 5 of those.

TAES training in preparation for groundwater district elections coming up in May. It is anticipated that a number of presentations will be requested in the spring of 2002.

TDLR reports that Texas Groundwater Association will be holding their convention and trade fair in Lubbock, January 29 through February 1, 2002. In conjunction with that trade fair, the Texas Water Well Driller's Advisory Council will hold a meeting on January 31, 2002.

TDLR has also adopted revised Chapter 76 rules - administrative and technical requirements for water well pump installers - on November 8, 2001. New fees were adopted November 5. TDLR is undergoing sunset at this time, and after preliminary meetings, Sunset Review staff has shown a particular interest in Abandoned Well Closure and the Abandoned Well Plugging Fund.

In light of the presentation on Open Meetings/Open Records, the question was posed as to whether or not letters were on file for the designation of representatives to the TGPC. Mary Ambrose, designated chair, indicated that she has letters for most in her files. In order to establish a quorum, and for a designated representative to represent a named member on public business of the Committee, such as a vote on an action item, a letter must be on file. Ms. Ambrose will work with Ms. Patel on developing a letter form that can be used by named members to designate representatives and alternates, and distribute these to members for action.

Ken Ofunrein introduced himself as the representative for TDH.

VII. Public Comment

None

VIII. Adjourn

Chair Mary Ambrose adjourned meeting at approximately 2:47 p.m., CDT.

Respectfully submitted,